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# The National Center for Law and Deafness

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

February 1, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: GEN Dkt. No. 90-314  
ET Dkt. No. 92-100 ✓

Dear Ms. Searcy:

On January 8, 1993, we filed reply comments in the above referenced docket. In those comments we incorrectly referred to one of our parties as the American Speech-Hearing-Language Association. The correct name of that organization is the American Speech-Language-Hearing Association. We have enclosed a new set of comments with the corrected name of the organization.

Sincerely,

*Karen Peltz Strauss*

Karen Peltz Strauss

Attorney for:

National Center for Law and Deafness  
Telecommunications for the Deaf, Inc.  
World Institute on Disability  
Self Help for Hard of Hearing People, Inc.  
American Speech-Language-Hearing Association

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY Washington, D.C. 20554

In the Matter of	)	GEN Docket No. 90-314
	)	ET Docket No. 92-100
Amendment of the Commission's	)	
Rules to Establish New Personal	)	RM-7140, RM-7175, RM-7617,
Communications Services	)	RM-7618, RM-7760, RM-7782,
	)	RM-7860, RM-7977, RM-7978,
	)	RM-7979, RM-7980
	)	
	)	PP-35 through PP-40, PP-79
	)	through PP-85

REPLY COMMENTS OF  
NATIONAL CENTER FOR LAW AND DEAFNESS, TELECOMMUNICATIONS  
FOR THE DEAF, INC., WORLD INSTITUTE ON DISABILITY,  
SELF HELP FOR HARD OF HEARING PEOPLE, INC.,  
AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION

I. INTRODUCTION

The National Center for Law and Deafness, Telecommunications for the Deaf, Inc., the World Institute on Disability, Self Help for Hard of Hearing People, Inc., and the American-Speech-Language-Hearing Association (hereinafter referred to as NCLD et. al.) hereby submit reply comments in response to In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, released by the Federal Communications Commission (FCC) on August 14, 1992 (NPRM). In this proceeding the FCC seeks comment on how to structure its regulatory treatment of personal communications services (PCS).

The National Center for Law and Deafness is a non-profit public interest law center and public service of Gallaudet University that has provided legal education and services to deaf and hard of hearing people throughout this country since 1975.

NCLD has been actively involved in legislation and Commission proceedings involving access to telecommunication and television services for individuals with hearing loss since that time.

Telecommunications for the Deaf, Inc. (TDI) is a non-profit organization which promotes and advocates visual telecommunication in the form of text telephones, computer-TTY programming, television captioning, computer assisted notetaking, and telecommunications relay services. TDI provides training and consultation to relay services, 911 emergency centers, and businesses to promote equal access for the international community of individuals with hearing and speech impairments who use visual telecommunication devices.

The World Institute on Disability is a private, non-profit policy center located in Oakland, California, that conducts in-depth analysis, research, training, and local, regional, and national public education on disability issues, including personal assistance services, telecommunications technology policy, leadership training, aging and disability, independent living, and international development.

Self Help for Hard of Hearing People, Inc. is a volunteer international non-profit, self-supporting, educational organization of hard of hearing people, their relatives and friends. It operates out of a national office in Bethesda, Maryland, and has 260 chapters in forty-eight states.

The American Speech-Language-Hearing Association is the professional and scientific society representing over 69,000

speech-language pathologists and audiologists nationwide. The Association and its members are interested in legislation and regulations in the areas of rehabilitation, health-care, education, training, research, and telecommunications which affect people with communication disorders.

## II. COMMENTS

### A. The Commission Should Address the Needs of Individuals with Disabilities in the Developmental Stages of Regulating and Licensing PCS Technologies.

In its Notice of Proposed Rulemaking and Tentative Decision in this docket, the FCC extols the benefits of mobile communications to free both business and residential consumers from the constraints of a wired telecommunications network. NPRM at 3. The Commission further states that its goal is to develop a regulatory structure for these services that would ensure that they "are provided with the highest quality at low-cost, reasonable rates to the greatest number of consumers" NPRM at 4. NCLD, et. al. applauds these Commission goals, but is extremely concerned that in the Commission's haste to facilitate the development of these services as quickly as possible with as few restrictions as possible (NPRM at 3, 64), the Commission will not achieve these stated purposes. The FCC's plan to avoid regulatory delay at all costs, we fear, may have devastating effects for individuals with disabilities and other segments of our society whose different needs must be addressed at the outset of developing a regulatory framework for PCS. Indeed, if the

needs of these individuals are not addressed in the initial stages of developing PCS technology, providers of these services are surely to complain that retrofitting their technology is too expensive at a later date.

A perfect example of this was demonstrated when the FCC extended its requirements for hearing aid compatible (HAC) telephones. HAC telephones enable individuals with certain hearing aids to hear more clearly during telephone conversations. In 1991, the FCC issued rules that would require all common areas of a workplace to be HAC. Memorandum Opinion and Order, In the Matter of Access by Persons with Hearing Impairments or Other Disabilities to Telecommunications Equipment and Services, CC Dkt. 87-124 (released August 7, 1992). At that time, the Commission also proposed to extend the HAC requirement to all telephones in all areas of the workplace by May 1, 1992. However, on June 4, 1992, when the FCC released its rule covering the entire workplace, it extended the time for compliance to May 1, 1993 for establishments with 20 or more employees, and to May 1, 1994 for all other establishments. The Commission's final rule responded to concerns by industry that the costs of retrofitting telephones for hearing aid compatibility would be too expensive. In defending its action, the Commission concluded that the "costs of field retrofitting, . . . are likely to be significantly higher than the . . . estimate originally relied upon". Report and Order, CC Dkt. 87-124 (released June 4, 1992) at 4.

Similarly, for more than one half a century, individuals with severe hearing loss and speech impairments were denied any access to the public switched telephone network. Indeed, until the Americans with Disabilities Act (ADA) came about requiring nationwide telecommunications relay services,<sup>1</sup> the telecommunications access needs of these individuals were almost entirely ignored. The consequences were isolation and loss of opportunities for Americans who were deaf, hard of hearing, and speech impaired across the country.

The FCC describes the personal communication services addressed in the current proceeding as having the potential to revolutionize telecommunications access by both consumers and businesses.<sup>2</sup> We fear that without consideration of the needs of individuals with hearing loss, speech impairments, and other disabilities in the early stages of regulating and licensing these services, these individuals will once again be left without basic access to these services. It is incumbent upon the FCC, as the agency charged with ensuring that such access remains available and affordable to all Americans, to ensure that this does not occur.

The FCC's NPRM discusses various options for licensing mobile communication services. Unfortunately, however, the bulk

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<sup>1</sup> Actually, the ADA's relay requirements do not go into full effect until July 26, 1993. 47 U.S.C. §225.

<sup>2</sup> For example, the FCC reports that consumer studies predict that there may be over 60 million PCS users in American within ten years. NPRM at 13.

of the FCC's discussion on this point reflects an overriding interest in expediting the licensing process over and above all other concerns. Indeed, the Commission rejects outright comparative hearings because, it explains, they are likely to be slower than other licensing alternatives. In their place, the FCC suggests as an option a "postcard lottery", which would give the winning applicant 30 days "to demonstrate that it meets all financial, technical and other eligibility requirements". NPRM at 33.

We have grave concerns about the manner in which the FCC is proposing to expedite licensing of PCS providers. While we do not at this time propose a specific licensing mechanism, we do urge the FCC to ensure that the licensing scheme chosen be one that protects the public interest with regard to both access to and affordability of PCS. Among other things, the licensing process should take into consideration the methods by which a PCS competitor proposes to meet the needs of individuals with disabilities in the provision of its mobile communication services. Only with these guarantees will these individuals be secure in knowing that they will not be given second class status with respect to accessing PCS.

B. PCS Should be Classified as a Common Carrier Service.

The FCC seeks comments on whether PCS is to be classified as a common carrier or private land mobile radio service. NCLD, et. al cannot urge strongly enough our preference that PCS be

classified as a common carrier service. As common carriers, PCS providers would be subject to numerous regulations designed to ensure equal and affordable access by all Americans.

Additionally, as noted by the GTE Corporation in its comments, as common carriers, PCS companies would be subject to the requirements of the Americans with Disabilities Act, to provide telecommunications relay services. GTE Comments at 51. In contrast, were PCS to be classified as a private service, it would be subject to little, if any, consumer regulation under the Communications Act of 1934 or state laws. Individuals with disabilities, along with all consumers, would be at the mercy of PCS competitors who might be able to refuse service at will absent such consumer protections.

For all too long, individuals with hearing loss and speech impairments were offered little or no access to basic telephone services. As access to these wired services finally become a reality for these individuals, the FCC should take whatever steps are necessary to ensure that history does not repeat itself with regard to personal communication services.

### III. Conclusion

On previous occasions, we have urged the FCC to recognize its obligation to consider the needs of individuals with disabilities in its regulation of telecommunications services. In comments submitted in the Commission's video dialtone proceeding, we noted that over ten years ago, Congress stated



that "making the benefits of the technological revolution in telecommunications available to all Americans, including those with disabilities, should be a priority of our national telecommunications policy."<sup>3</sup> We again urge the Commission not to neglect these segments of the American population in its regulation of PCS. Toward that end, we urge the Commission to (1) classify PCS as a common carrier service, and (2) make access to PCS by individuals with disabilities one of the eligibility requirements for a license award.

Respectfully submitted,

National Center for Law and Deafness  
Telecommunications for the Deaf, Inc.  
World Institute on Disability  
Self Help for Hard of Hearing People, Inc.  
American Speech-Language-Hearing Association

By: /s/ Karen Peltz Strauss

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January 8, 1993

Their Attorney

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<sup>3</sup> House Report to the Telecommunications for the Disabled Act of 1982, H. Rep. No. 888, 97th Cong., 2d Sess. 3 (1982).